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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/581,459	07/27/2000	STEPHAN SCHMITZ	10191/1452	7359
26646 7590 04/07/2009 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER				
LIPMAN, JACOB				
ART UNIT		PAPER NUMBER		
2434				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/581,459

**Applicant(s)**

SCHMITZ ET AL

**Examiner**

JACOB LIPMAN

**Art Unit**

2434

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10,11 and 14-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10,11 and 14-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 10, 11, and 14-18 are rejected under 35 U.S.C. 103(a) as being anticipated by Dustan et al., USPN 5,88,312 in view of See et al., USPN 6,070,243.

With regard to claim 10, Dustan discloses a base station (database server) including a computer (fig 1) that transmits a prompt within the framework of an initial successful prompt/reply cycle (SSL, column 11 lines 49-60) where the prompt is stored in the base station (session key of SSL), and a remote control device (client) which stores the prompt (session key of SSL), wherein, in an access authorization process during system operation, subsequent to the initial prompt/reply cycle, the remote control device (client) transmits a reply (column 8 lines 63-66) to the base device (database server) partially a function of the initial prompt (SSL session key, column 9 lines 3-8), the base station receives the reply and compares it with the required reply (column 9 lines 1-3), and grants access accordingly (column 9 lines 8-16). Dustan does not disclose erasing the SSL session key after a number of failed attempts. See discloses terminating a session with a user after a predetermined number of failed login attempts

(column 11 lines 15-38). It would have been obvious for one of ordinary skill in the art to use the method of See to delete the SSL session key of Dustan after a number of failed attempts as to not allow a hacker unlimited attempts to break into the system.

With regard to claim 11, an SSL session key is formed using the remote control's unique public key.

With regard to claims 14-17, Dustan does not disclose including a count in accessing the database. The examiner takes official notice that it is well known in the art to limit access to a number of logins. It would have been obvious for one of ordinary skill in the art to include a count in accesses in Dustan in order to prevent unlimited access for the motivation of control and profit (charging for more accesses). Support for this assertion can be seen in art previously presented, Abraham, USPN 5,745,576. Abraham discloses a reply that includes a transaction count (column 9 lines 24-26), which is tracked (column 10 lines 22-24), changed (column 10 lines 31-35), and encrypted (column 9 lines 24-26).

With regard to claim 18, Dustan discloses the system of claim 10, as outlined above, but does not mention wireless communication or frequencies. The examiner takes official notice that it is well known in the art to have different wireless device working on different frequencies. Since this official notice was previously taken and not traversed, it is taken as admitted prior art. It would have been obvious for one of ordinary skill in the art to use Abraham's system in a wireless environment with different frequencies to avoid interference and allow mobility.

***Response to Arguments***

3. Applicant's arguments filed 15 January have been fully considered but they are not persuasive.

With regard to applicant's argument that, "the Examiner's asserted interpretation does not make any sense", the examiner disagrees. As applicant points out, a session key is the end product of a handshake which reads on a prompt/reply cycle successfully carried out. The pre-master key of applicant's description is used to generate the session key, and thus is a function of the session key, and it is stored on the base station. The remote control also stores this pre-master key, in that it is a function of its session key. When the remote control tries to communicate with the base station, it uses this session key (and thus the pre-master key) to encrypt information. If this information is encrypted incorrectly, and messages continue to be sent incorrectly, seemingly from a brute force attack, the base station would end the session, and thus erase the session key, as outlined above.

#### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JACOB LIPMAN whose telephone number is (571)272-3837. The examiner can normally be reached on M-Fr.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Zand can be reached on 571-272-3811. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jacob Lipman/  
Examiner, Art Unit 2434